and Amboy R. Co., 37 N. J. L. 222. It has been held, though this is opposed to the weight of authority, that even the costs of the original proceeding are taxable against the owner. *Rogers* v. *City of St. Charles*, 54 Mo. 229. *Contra*, *Adams County* v. *Dobschlag*, 19 Wash. 356, 53 Pac. 339.

EMINENT DOMAIN — COMPENSATION — WATERWAY CONSTRUCTED BY CITY THROUGH RAILWAY'S RIGHT OF WAY NECESSITATING STRUCTURAL CHANGES. — A city constructed a canal, with walks on either side, through the right of way of a railroad, in order to join certain lakes, used principally for pleasure by its inhabitants. This made it necessary for the railroad to build a bridge. *Held*, that the railroad is not entitled to recover from the city the cost of building the bridge. *Chicago, M. & St. P. Ry. Co.* v. *City of Minneapolis*, 133 N. W. 169 (Minn.).

The authorities are not harmonious in allowing compensation in such cases. This is because judges have not always been mindful of the distinction between eminent domain and the police power. See 3 HARV. L. REV. 189; 22 *id.* 542. The former is resorted to where private property is taken for a public use; the latter where the sovereign restricts, regulates, or destroys private property in the public interest. See 1 LEWIS, EMINENT DOMAIN, §§ 3, 6, 7. In the latter case there need be no compensation. *Philadelphia* v. *Scott*, 81 Pa. St. 80. In certain border-line cases the two powers so shade into each other that it becomes difficult to say whether there is a duty to make compensation. See *Philadelphia* v. *Scott*, *supra*, 86. However, in the principal case the erection of the bridge was made necessary by the exercise of the right of eminent domain. It is damage proximately consequent. The police power was not properly invoked. Where no special statutory provisions exist, as in the principal case, the rule is to give the value of the land taken and the cost of structural changes made necessary. *Paterson, etc. R. Co.* v. *Nutley*, 72 N. J. L. 123, 59 Atl. 1032; *Cincinnati, etc. Ry. Co.* v. *Troy*, 68 Oh. St. 510, 67 N. E. 1051. See 2 LEWIS, EMINENT DOMAIN, § 733. But *cf. C., I. & W. Ry. Co.* v. *City of Connersville*, 218 U. S. 336, 31 Sup. Ct. 93. But there is considerable diversity among the statutory provisions on the subject. See 2 LEWIS, EMINENT DOMAIN, §§ 733 *et seq.*

EMINENT DOMAIN — COMPENSATION — WHAT CONSTITUTES AN ENTIRE TRACT. — The plaintiff owned a block of land on B. Street south of A. Street, and also the fee of B. Street, subject to a public easement. The defendant railway company, owning land on both sides of B. Street north of A. Street, built a bridge for trains, with the consent of the city authorities, across A. Street from one portion of its land to the other. *Held*, that the plaintiff can recover merely nominal damages for the injury done to his fee of the street and not consequential damages for the injury to his lot. *Coatsworth* v. *Lehigh Valley Ry. Co.*, 131 N. Y. Supp. 300 (Sup. Ct.).

It is well established that where part of a parcel of land is taken under eminent domain, just compensation includes damages to the residue as well as the value of the portion taken. *South Buffalo Ry. Co.* v. *Kirkover*, 176 N. Y. 301, 68 N. E. 366; *Richardson* v. *City of Centerville*, 137 Ia. 353, 114 N. W. 1071. What constitutes a "parcel" in this sense has been the subject of much litigation. See 2 LEWIS, EMINENT DOMAIN, 3 ed., §§ 698–701. If the residue was more valuable in connection with the land taken than it is as a separate lot, justice clearly requires that the owner be compensated for the decrease in value. That being the reason of the rule, in order to fall within it, the two lots, it is generally held, must be used as one property or be adapted to such use. *Hoyt* v. *Chicago, etc. Ry. Co.*, 117 Ia. 296, 90 N. W. 724; *Frick Coke Co.* v. *Painter*, 198 Pa. St. 468, 48 Atl. 302. Thus, if a man having two contiguous farms occupies one and rents the other, he cannot collect for damages to both, if a

portion of one is taken. *Minnesota Valley R. Co.* v. *Doran*, 15 Minn. 230. In the present case, the test is not satisfied, since the plaintiff's right in the street is merely nominal, the public being virtually the owner. See *City of Schenectady* v. *Trustees of Union College*, 144 N. Y. 241, 249, 39 N. E. 67, 68. The decision, therefore, is clearly correct.

EQUITY — JURISDICTION — SECURITY FROM ADMINISTRATOR FOR PAYMENT OF UNMATURED DEBT OF DECEDENT. — The plaintiff's claim against the estate of the maker of notes, maturing more than three years after the maker's death, was disputed by his administrator. The only remedy provided by the Code was suit at law after the notes matured. The administrator demurred to the plaintiff's petition in equity to have sufficient assets set aside to meet the claim when due. *Held*, that the demurrer should be overruled. *Bankers' Surety Co.* v. *Meyer*, 131 N. Y. Supp. 57 (App. Div.).

Creditors' bills against an administrator constitute one of the oldest heads of equity jurisdiction. See POMEROY, EQUITY JURISPRUDENCE, 3 ed., §§ 348 *et seq.*, §§ 1151 *et seq.* To-day administration proceedings are carried on almost exclusively in the probate court. Statutes usually provide that a fund may be ordered to be set apart to meet unmatured or contingent claims. *Hoyt* v. *Bonnett*, 50 N. Y. 538. See *Cobb* v. *Kempton*, 154 Mass. 266, 268, 28 N. E. 264, 265. But generally equity still has at least supplementary jurisdiction. See *Chipman* v. *Montgomery*, 63 N. Y. 221, 235, 236. The principal case proceeds on the ground of a trust. But, though the executor holds the assets in a fiduciary relation to creditors and legatees, he is to be distinguished from a trustee. See AMES, CASES ON TRUSTS, 2 ed., 73, note 4. In a suit against an executor for a debt, the period of limitation is not that for enforcing trusts. *Scott* v. *Jones*, 4 Cl. & Fin. 382. A legacy is not a trust under a statute excepting trusts from the operation of a creditor's bill. *Bacon* v. *Bonham*, 27 N. J. Eq. 209. The creditor, however, should be able to secure the payment of his unmatured claim. *Johnson* v. *Mills*, 1 Ves. Sen. 282. See *Petrie* v. *Voorhees' Exr.*, 18 N. J. Eq. 285, 288. One whose legacy is payable in the future has a similar right. *Merritt* v. *Richardson*, 14 All. (Mass.) 239, 242. Likewise, a life-tenant of personalty may be required to give security for the protection of the remainderman. *Lyde* v. *Taylor*, 17 Ala. 270.

INSURANCE — NATURE AND INCIDENTS OF INSURANCE CONTRACTS — CONTRACT TO DEFEND PHYSICIAN AGAINST SUITS FOR MALPRACTICE. — The plaintiff company brought a bill to restrain the insurance commissioner from interfering with its business, which consisted in issuing a contract to physicians, whereby the company in consideration of an annual payment agreed to employ an attorney to defend the holder of the contract in all suits for civil malpractice that should be brought against him; but the company was not to pay the judgment if the suit were lost. *Held*, that the bill should be dismissed. *Physicians' Defense Co.* v. *Cooper*, 188 Fed. 832 (Circ. Ct., N. D. Cal.).

"Insurance is a contract by which the one party in consideration of a price paid adequate to the risk becomes security to the other that he shall not suffer loss, damage, or prejudice by the happening of the perils specified to certain things which may be exposed to them." See *Lucena* v. *Craufurd*, 2 B. & P. N. R. 269, 301; *Cummings* v. *Cheshire County M. F. Ins. Co.*, 55 N. H. 457, 458. It differs from a contract of warranty or for services by the fact that the consideration is paid simply for assuming the risk and is not proportional to the property or services expected in return. *Cole* v. *Haven*, 7 N. W. 383 (Ia.); *Commonwealth* v. *Provident Bicycle Association*, 178 Pa. St. 636, 36 Atl. 197. It differs from the ordinary contract of suretyship, because of its separate development historically; but modern corporations which make a business of acting as sureties for fixed premiums are recognized as insurance companies.